DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-06-28,734

In re: 4616 Ellicott Street, N.W.

Ward Three (3)

RICHARD HUMRICHOUSE, et al.,
Housing Providers/Appellants

v.

ALICE R. BOYLE
Tenant/Appellee

DECISION AND ORDER

August 8, 2008

PER CURIAM. This case is on appeal from the District of Columbia Office of Administrative Hearings (OAH) pursuant to the Office of Administrative Hearings Establishment Act of 2001, D.C. OFFICIAL CODE § 2-1831.03 (b-1)(1) (2001), the Housing Regulation Administration, Department of Housing and Community Development, the Rental Housing Commission (Commission), pursuant to Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01 – 3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501 – 510 (2001), and the District of Columbia Municipal Regulations (DCMR), 1 DCMR §§ 2800 – 2899 (2004), 1 DCMR §§ 2920 – 2941 (2004), and 14 DCMR §§ 3800 – 4399 (2004), govern the proceedings.

I. PROCEDURAL HISTORY

Alice R. Boyle, the tenant/appellee, filed RH Tenant Petition (TP) 06-28,734 on July 31, 2006. In her petition, Ms. Boyle, who occupied the singe family home at 4616

Ellicott Street, N.W., alleged that the housing providers/appellants, Richard Humrichouse, Prudential Carruthers Realtors, PCR Home Service, and PCR Property Management Services: 1) failed to file the proper rent increase forms with the RACD; 2) increased the rent while the unit was not in substantial compliance with the District of Columbia Housing Regulations; 3) did not properly register her rental unit with the RACD; 4) substantially reduced the services and/or facilities provided in connection with the rental of her unit; 5) took retaliatory action against her for exercising her rights as a tenant pursuant to § 502 of the Act; and 6) improperly served notice to vacate on her pursuant to § 501 of the Act.

A hearing on the tenant petition was held on March 27, 2007, with Administrative Law Judge (ALJ) Nicholas H. Cobbs presiding. The tenant appeared *pro se*, introduced evidence, and presented testimony from her neighbor, Mary Kenny.[1] The housing provider appeared through counsel, Brian Riger, who introduced evidence and presented testimony from Richard Humrichouse, realty agent named as an appellant in this action. The ALJ issued the decision and order on April 8, 2008. The decision contained the following findings of fact:

1. The subject property is 4616 Ellicott Street, N.W., Washington, DC 20016.

2. Alice R. Boyle lived in the subject housing accommodation beginning June 15, 2004. She is the Petitioner in this matter.

3. Mr. Craig Puckett is the owner and landlord for the subject property. Prudential Carruthers Realtors is the landlord's agent. Mr. Richard Humrichouse is employed by Prudential Carruthers Realtors as a licensed real estate agent and professional property manager. Mr. Humrichouse managed about 45 properties, many of them in Maryland.

[1] A list of all exhibits received in evidence is set forth in the Appendix. The exhibit list for the hearing reflects an exhibit, Petitioner's Exhibit (PX) 119, a work order, which is not in the file of the administrative court. The exhibit list shows that the exhibit was not offered or admitted into evidence.

4. Prudential Carruthers Realtors is a Maryland-based company.

5. Mr. Humrichouse is a Respondent in this matter.

6. Clauses in the initial lease stated, in all capital letters, that the property was not regulated by the rent stabilization program, and therefore, exempt from rent control.

7. Clauses in the initial lease also stated that a copy of the exemption form and certificate of exemption were attached to the lease and delivered to the tenant.

8. No exemption form had been filed with the Rent Administrator for the subject housing accommodation.

9. No certificate of exemption had been issued to the tenant.

10. The subject housing accommodation was eligible for exemption as a single family house, because the owner did not own any other rental properties in the District.

11. Neither the Respondent nor his predecessor, MaryAnn McDermott, was familiar with the District's requirement to register exempt properties with the RACD.

12. The housing accommodation was not registered with the Rent Administrator when the second lease was executed in June 2005.

13. No copy of the exemption form or certificate of registration was attached to the second lease.

14. The subject housing accommodation was registered on January 29, 2007, after the Respondent's attorney informed him of the policy.

15. Air conditioners are a related facility that housing providers agreed to furnish under the lease. The Petitioner was deprived of such facility for four days from June 16, 2004 to June 19, 2004 when she purchased and installed the new air conditioners.[2]

16. The Petitioner was deprived of the use of hot water and one toilet for five days from October 10 to October 15, 2004, before the housing providers arranged for a plumber to restore the hot water and fix the clogged toilet.[3]

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[2] The record does not reveal whether the Tenant was reimbursed for the air conditioners she purchased. The OAH did not have the authority to award reimbursement of tenant's out-of-pocket expenses.

17. The Petitioner was deprived of the protection from the fence that separated her yard from her neighbor's yard from February 24, 2006, through the date of the hearing. It was noted that the fence was in need of repair during the housing provider's Bi-Annual Condition Report.

18. The Petitioner was still able to use the leaking washing machine nearly five months after the tenant petition was filed.

19. The Petitioner was unable to establish the nature, duration, and sustainability of other complaints she made regarding the housing accommodation, including rodent infestation, basement flood, blown fuses, dishwasher and other immaterial problems.

20. On June 30, 2006, the Respondent issued a Notice to Vacate to the Petitioner.

21. The Petitioner remained at the subject housing accommodation and filed a tenant petition on July 31, 2006.

22. Housing providers made no further demands for Petitioner to vacate, and did not initiate any legal action.

23. On August 9, 2006, the Respondent sent tenant a new lease which incorporated a $100 rent increase per month.

24. No evidence of rent ceiling for property because it was never registered with the RACD.

25. The rent ceiling is $2095 based on the initial rent charged.

26. Tenant receives a $420 refund for the value of the reduced services and facilities.

27. The tenant cannot be awarded a refund of the additional $100 November 2006 rent increase because she did not amend her petition to give notice to housing providers.

28. The housing providers did not act in bad faith or willfully violate the Rental Housing Act; therefore, treble damages do not apply.

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[3] The record does not indicate if there were other toilets in the house available for Tenant's use aside form the one that was clogged. Without any proof, the ALJ determined that at least one other toilet was available based on a listing of three allegedly comparable housing accommodations submitted by the tenant. PX 117.

29. The tenant is entitled to a rent refund of $3800 for the illegal July 2005 rent increase, plus the $420 refund for reduced services/facilities, and interest of $436.76. The total refund due is $4,656.76.

Boyle v. Humrichouse, et al., RH-TP-06-28,734 (RACD Apr. 8, 2008) (Decision) at 3-8, 18-23. The ALJ concluded as a matter of law:

1. The Respondent failed to prove that he was not a housing provider of the housing accommodation, and thus an improperly named party. The Act defines 'housing provider' as 'landlord, an owner, lessor, sublessor, assignee, or their agent, or any other person receiving or entitled to rents or benefits for the use or occupancy of any rental unit within a housing accommodation within the District.' D.C. OFFICIAL CODE § 42-3501.03(15) (2001). He testified that he was an agent for Prudential Carruthers Realtors, and the record shows that he received rental payments on behalf of the owner. The Respondent's scope of employment includes him within the meaning of 'housing provider' as defined in the Act. See Budd v. Haendel, TP 27,598 (RHC Dec. 16, 2004) at 15 ('any person who receives or is entitled to receive rent, or is the agent of the housing provider, is a proper party to be named as a respondent in a tenant petition'); Dias v. Perry, TP 24,379 (RHC Apr. 20, 2001) at 7-8 (holding that a woman who received rent payments and stated that she was an "agent for conducting business at the housing accommodation" was a proper party).

2. The Respondents were not eligible to claim the small landowner exemption, D.C. OFFICIAL CODE § 42-3502.05 (a)(3) (2001), because the owner, Mr. Puckett, was not named in the tenant petition as a housing provider. If the owner had been named a housing provider, the expertise of the agents would have been credited to him since they manage the property on his behalf. See Reid v. Quality Mgmt. Co., TP 11,307 (RHC Feb. 7, 1985) at 3, aff'd sub nom. Quality Mgmt., Inc. v. D.C. Rental Hous. Comm'n, 505 A.2d 73 (D.C. 1986); see also Boer v. D.C. Rental Hous. Comm'n, 564 A.2d 54, 57 (D.C. 1989) (Boer v. Houghton, TP 12,027 (RHC May 13, 1988)) ("The RHC held in Reid that when a landlord is represented by knowledgeable agent, it is 'altogether insufficient' for the landlord to be excused from violations of the [Rental Housing Act] on the ground that the agent did not understand its requirements") (quoting Reid, TP 11,307 at 3).

3. The housing providers failed to register the property with the Rent Administrator. The Act requires you to file a claim of exemption to receive exemption from the rent control laws. D.C. OFFICIAL CODE § 42-3502.05(a)(3)(C) (2001). The Rental Housing regulations require registration of all rental units covered by the Act, 'including each rental unit exempt from the Rent Stabilization Program.' 14 DCMR § 4101.1 (2004). A housing provider who fails to file a proper Registration/Claim of Exemption Form "shall not be eligible for and shall not take or implement…[a]ny increase in

the rent charged for a rental unit which is not properly registered." 14 DCMR § 4101.9(b) (2004).

4. Tenant has not satisfied her burden to prove that there were substantial housing code violations at the subject housing accommodation when the housing providers issued a rent increase. Although the record establishes that certain services and facilities were reduced at various times, there is no evidence that there were any substantial housing violations when housing providers increased the rent July 1, 2005. 14 DCMR § 4216.2 (2004) (footnote omitted) (lists housing violations that are "substantial" for purposes of determining compliance with the Act). Since the housing providers' rent increase was illegal on other grounds, their compliance is of no value and the tenant will obtain the relief she seeks.

5. The tenant successfully "present[ed] competent evidence of the existence, duration, and severity of the reduced services," Jonathan Woodner Co. v. Enobakhare, TP 27,730 (RHC Feb. 3, 2005) at 11; see Hamilton v. Mass. Mutual Life Ins. Co., TP 24,805 (RHC Jan. 31, 2000); see also Pierre-Smith v. Askin, TP 24,574 (RHC Feb. 29, 2000), concerning the malfunctioning air conditioners in June 2004, the lack of both hot water and a working toilet in October 2004, and the broken fence from February 2006 through the date of the OAH hearing, to prove the that there was a substantial reduction in services and facilities at the housing accommodation. D.C. OFFICIAL CODE § 42-3502.11 (2001). The evidence presented does not support the claim that the tenant experienced a substantial reduction in service and facility regarding the washing machine.

6. The tenant is entitled to a $420 rent refund for a reduction in services and facilities at the housing accommodation: $60 for failure to repair the air conditioners for four (4) days; $100 for failure to repair the hot water and clogged toilet for five (5) days; $260 for failure to repair the fence for thirteen (13) months. ALJ was entitled to find the dollar value for this rent refund based on competent evidence; expert witness and testimony is not required. Norman Bernstein Mgmt., Inc. v. Plotkin, TP 21,282 (May 10, 1989) at 5.

7. The tenant failed to prove that the housing providers engaged in retaliatory action against her by raising her rent illegally and threatening to evict her from the housing accommodation. For such action to raise a presumption of retaliation, it must occur within six months of when the tenant engages in certain acts of protest. D.C. OFFICIAL CODE § 42-3505.02(b) (2001). See also 14 DCMR § 4303.4 (2004). Such presumption doesn't exist because the tenant's written requests within six months of the housing providers' notice of the August 2005 rent increase and the notice to vacate on June 30, 2006, did not pertain to any repairs necessary to bring the housing accommodation in compliance with the housing regulations. PXs 105, 111. Also, ALJ concluded that there was clear and convincing evidence that the housing

> providers' acts were not retaliatory because they believed that the property was exempt from rent control and that it was permissible to raise the rent or evict the tenant without having to comply with the Act. (footnote omitted) Clear and convincing evidence has been defined by the District of Columbia Court of Appeals as 'evidence that will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established.' Lumpkins v. CSL Locksmith, LLC, 911 A.2d 418, 426, n.7 (D.C. 2006) (quoting In re Dortch, 860 A.2d 346, 358 (D.C. 2004)).
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> 8. The tenant successfully proved that the housing providers violated § 501 in the Act when they served her a notice to vacate. The housing providers were in violation three ways: (1) housing providers sought to evict the tenant while she continued to pay rent; (2) the notice to vacate did not contain a statement detailing the reasons for the eviction; (3) housing providers did not serve a copy of the notice to vacate to the Rent Administrator.
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> 9. The tenant is entitled to refund for the illegal $200 rent increase that housing providers imposed effective July 1, 2005, for the date of the increase through January 2007, when the housing providers filed their claim of exemption. The rent refund due the tenant for those nineteen (19) months is $3800. No fines were imposed. The tenant was also awarded a $420 rent refund for a reduction in services and facilities at the housing accommodation. The total refund is $4220, but the total award is $4,656.76, which includes interest at a rate used by the Superior Court of the District of Columbia from the date of the violation to the date of the issuance of the OAH's decision. (footnote omitted) 14 DCMR §§ 3826.1 – 3826.3 (2004); Marshall v. District of Columbia Rental Hous. Comm'n, 533 A.2d 1271, 1278 (D.C. 1987).

Boyle v. Humrichouse, et al., RH-TP-06-28,734 (RACD Apr. 8, 2008) at 9-23.

The ALJ concluded that the housing providers violated two provisions of the Act. First, he held that the appellants violated D.C. OFFICIAL CODE § 42-3502.05 (2001) by not properly registering the tenant's housing accommodation, and therefore prevented the housing provider from implementing the $200 rent increase in July 2005. Second, the ALJ held that the tenant's use of certain services and facilities at the housing accommodation were substantially reduced at times, thus warranting a rent refund. The ALJ awarded the tenant $4,656.76, which included interest through the date of his decision.

The housing provider filed a timely notice of appeal in the Commission. The Commission held the appellate hearing on July 17, 2008.

II. ISSUES ON APPEAL

On appeal, the housing provider raised the following issues:

> 1. The respondent is an improperly named party.
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> 2. The doctrine of Respondeat of [sic] Superior should apply. I was merely an employee of Prudential Carruthers Realtors, PCR Home Service, and PCR Property Management Services. I never testified that I received rents from the tenant petitioner.

Notice of Appeal at 1.

III. DISCUSSION OF THE ISSUES

A. & B. Whether the ALJ erred when he found that Richard Humrichouse was a "housing provider," as defined by § 42-3501.03(15) (2001) of the Rental Housing Act, such that, he is a properly named party in the tenant petition.

On April 25, 2008, Housing Provider, Richard Humrichouse, the agent of Prudential Carruthers Realtors, filed a notice of appeal in the Commission. The appellant argued that the ALJ erred when he found that the appellant was a housing provider of the housing accommodation. Among the four named housing providers in the petition, Humrichouse was the only one to appeal the ALJ's ruling. On July 17, 2008, the Commission held a hearing on the housing provider's appeal from the April 8, 2008, decision and order.

The evidence of record reflects that the housing provider, Richard Humrichouse and the tenant, Alice R. Boyle, executed a lease on June 15, 2004, Respondent's Exhibit (RX) 200 providing that the tenant would occupy the residence at 4616 Ellicott Street, N.W., a small single family house. The rent stated in the first lease was $25,140 for a one year term, which equates to $2095 per month. The tenant testified and submitted

documentary evidence that showed that she began having problems regarding the services and facilities at the accommodation immediately after she moved in. On June 24, 2005, at the housing provider's request, the tenant signed a second lease that provided for monthly rental payments of $2295, an increase of $200 per month, starting July 1, 2005. RX 201. The tenant paid the increase, but continued to have service and facility problems at the housing accommodation. When she reported the service and facility problems at the housing accommodation, she notified the housing provider through the appellant, Mr. Humrichouse. PX 105.

The tenant purchased two air conditioners and installed them when she did not receive an immediate response after complaining to the agent about the lack of functioning air conditioners. PX 100. Also, she and her two children had to bathe at a neighbor's house when the toilet clogged and hot water simultaneously failed. She reported the problems to the appellant, the housing providers' agent, immediately upon discovering the problems. PX 101.

Another complaint concerned a section of the fence that collapsed at some point which separated the tenant's yard from the next door neighbor. PX 109. The fence had not been repaired as of the date of the hearing, and a Bi-Annual Condition Report dated February 24, 2006, also noted that the fence needed repair. PX 108. Also, the tenant reported that the washing machine was leaking to the housing provider in December 2005 and March 2006. PXs 107, 111.

The remaining complaints the tenant lodged with the housing providers' agent concerned insubstantial matters, including a back gate that did not close properly, a

railing that needed to be painted, and a poorly wired back yard light that also turned on the lights in the basement when it was switched on.

On June 30, 2006, Mr. Humrichouse sent the tenant a letter "to notify [her] that the owner has decided not to renew [her] lease at the end of the lease term on June 30, 2006." It further stated that, "[Y]our vacate date is July 31, 2006." PX 118.

After the tenant filed her petition on July 31, 2006, Mr. Humrichouse sent the tenant a letter which included a renewal lease for the housing accommodation at a rent of $2395 per month, an increased rent of $100 per month, effective November 1, 2006. The tenant responded to Mr. Humrichouse's correspondence on August 16, 2006, and refused to pay the rent increase because it was "against the law." PX 114.

Richard Humrichouse argues that he was not a housing provider, as defined by the Act, for the subject housing accommodation. He avers that he was employed by Prudential Carruthers Realtors as a property manager, but stated that "all action was taken at the direction of the company," and not on his own volition. CD Recording (RHC July 17, 2008). He also stated that "all rent payments went to the corporate office in Virginia," and that he was "not authorized to receive rent." CD Recording (RHC July 17, 2008). For these reasons, Mr. Humrichouse believed that he should not be listed among the other respondents and should not be held liable to pay the awarded damages.

The Act, D.C. OFFICIAL CODE § 42-3501.03(15) (2001), states that "'Housing provider' means a landlord, an owner, lessor, sublessor, assignee, or their agent, or any other person receiving or entitled to receive rents or benefits for the use or occupancy of any rental unit within a housing accommodation within the District." (emphasis added). Given the evidence presented, the ALJ found that Mr. Humrichouse was a properly

named party because he was an agent of the owner who hired Prudential Carruthers Realtors to manage the subject housing accommodation. See RXs 118, 202. The definition of 'agent' is "one who is authorized to act for or in place of another; a representative." Black's Law Dictionary 64 (7th ed. 1999). The ALJ's decision was supported by evidence in the record which showed that Mr. Humrichouse was permitted to act for his employer. There are documents in the record containing Mr. Humrichouse's signature, reflecting that his actions were on behalf of his employer and, in turn, the owner. See PXs 104, 108, 113.

The ALJ was correct when he found that Mr. Humrichouse and the other named Respondents were all housing providers under the Act and are individually and collectively liable to pay the awarded damages to Ms. Boyle. See Budd v. Haendel, TP 27,598 (RHC Dec. 16, 2004); see also Dias v. Perry, TP 24,379 (RHC Apr. 20,2001). Therefore, the decision of the ALJ is affirmed.

IV. CONCLUSION

Accordingly, because the record reflects that the Appellant was a housing provider pursuant to the definition found in the Act, D.C. OFFICIAL CODE § 42-3501.03(15) (2001), the decision of the ALJ is affirmed.

SO ORDERED.

RONALD A. YOUNG, CHAIRMAN

DONATA EDWARDS, COMMISSIONER

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (1991), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (1991), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision by the Rental Housing Commission … may seek judicial review of the decision … by filing a petition for review in the District of Columbia Court of Appeals." Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The Court may be contacted at the following address and telephone number:

D.C. Court of Appeals
Office of the Clerk
500 Indiana Avenue, N.W., 6th Floor
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in RH-TP-06-28,734 was sent by priority mail with delivery confirmation, postage prepaid, this **8th day of August, 2008**, to:

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